UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MUSTAFA FTEJA,

Plaintiff,

vs.

FACEBOOK, INC.,

Defendant

Civil Action No. 1:11-cv-00918 (RJH) (MHD)

**FACEBOOK, INC.'S OPPOSITION TO MOTION FOR JOINDER BY NON-PARTY DIMITRIOS FATOUROS**

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## INTRODUCTION

Non-party Dimitrios Fatouros ("Fatouros") is angry at Facebook, Inc. ("Facebook") for disabling his free Facebook account. But aside from that superficial similarity, his claims have nothing to do with the claims of plaintiff Mustafa Fteja ("Fteja"). Indeed, Fatouros admits that his knowledge of this case begins and ends with what he read "in the news." Nonetheless, Fatouros asks the Court to join him as a plaintiff under Federal Rule of Civil Procedure 20(a).

join him under that rule because his claims and Fteja's claims do not involve the same facts or legal issues. Third, adding Fatouros as a plaintiff would cause undue prejudice, delay, and complexity. His attempt to inject himself into Fteja's lawsuit therefore should be rejected.

## BACKGROUND

Fatouros has no personal knowledge of Fteja's allegations, no stake in the resolution of Fteja's claims, and no other discernible connection to this case. What he does have is an unrelated grievance against Facebook. Specifically, Fatouros believes that Facebook disabled his free Facebook account to retaliate against him for writing a political editorial published in a foreign news outlet—a baseless theory expounded at length in his lengthy memorandum of law. *See* Dkt. 12 at 9, 14-16; Dkt. 12-1 at 1-2 (ECF pagination).

In Fatouros's view, his unrelated grievance entitles him to a central role in Fteja's lawsuit. He therefore moves the Court to add him as a plaintiff under Federal Rule of Civil

Procedure 20(a). *See* Dkt. 12 at 1 (ECF pagination).[1] Fatouros offers no argument or authority in support of his joinder motion, nor could he. That motion should be denied.

## ARGUMENT

### A. Non-parties may not invoke Rule 20(a).

As an initial matter, Fatouros's motion should be denied because it is procedurally improper. Rule 20(a) permits parties to join non-parties—not the other way around. Thus, non-parties like Fatouros may not use Rule 20(a) to thrust themselves into other peoples' lawsuits.

the permissive party joinder rule.”). *See also Thompson v. Boggs*, 33 F.3d 847, 858 n.10 (7th Cir. 1994) ("[P]laintiff has failed to direct us to any case, nor have we been able to locate any case, in which a court granted a motion to join made by a non-party to the lawsuit."). Fatouros's motion should be denied for that reason alone.

### B. Fatouros cannot meet Rule 20(a)'s requirements.

Even if Fatouros could invoke Rule 20(a), he cannot satisfy it. Joinder is proper under Rule 20(a) only when persons "assert any right to relief jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences," and "any question of law or fact common to all plaintiffs will arise in the action." Fed. R. Civ. P. 20(a)(1)(A)-(B). Fatouros meets neither of those requirements.

#### 1. No common transactions or occurrences.

It is beyond dispute that Fatouros's claims are not based on the same transactions or occurrences as Fteja's claims. As noted above, Fatouros knows about Fteja only because he

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[1] The bulk of Fatouros's briefing is dedicated to "opposing" Facebook's Motion to Transfer Venue, Motion to Dismiss, and Motion for a More Definite Statement—even though that motion relates only to Fteja's complaint and has nothing to do with Fatouros or any other non-party. Facebook will respond to Fatouros's "opposition," which is meritless, in Facebook's reply brief in support of its Motion to Transfer Venue, Motion to Dismiss, and Motion for a More Definite Statement.

"read about him in the news." Dkt. 12 at 3 (ECF pagination). Moreover, all of Fatouros's allegations relate to his conduct, his Facebook account, his interactions with Facebook, and alleged harms to his relationships. *See, e.g.*, *id.* at 9-10 (ECF pagination). None of Fatouros's allegations have anything to do with Fteja or the facts alleged in Fteja's complaint. For example, Fatouros says Facebook retaliated against him for writing a political editorial, while Fteja alleges Facebook discriminated against him on the basis of his religion and ethnicity. Fatouros complains about how Facebook disabled his free account (for reasons specific to Fatouros),

Fteja). And Fatouros seeks damages for injuries to his personal relationships, while Fteja seeks damages for injuries to his personal relationships. Thus, Fatouros's and Fteja's claims and alleged damages depend on wholly distinct and unrelated facts and evidence.

In short, Fatouros and Fteja have exactly one thing in common: both are angry at Facebook for disabling their accounts. But as the case law makes clear, that is simply not enough to justify joinder. *See Cestone v. General Cigar Holdings, Inc.*, 2002 WL 424654, at *3 (S.D.N.Y. Mar. 18, 2002) (severing claims where plaintiffs sought relief against the same defendant on the same legal theory but plaintiffs "did not know of each other's claims prior to a newspaper article" and plaintiffs' allegations were based on separate incidents involving different actors) (attached as Exhibit A).

**2. No common questions of fact or law.**

In addition, Fatouros's and Fteja's claims do not involve common questions of fact or law. Again, there is no factual nexus between their allegations. And Fatouros is wrong to suggest that a common legal issue—namely, the enforceability of Facebook's forum-selection clause—links his claims to Fteja's claims. *See* Dkt. 12-1 at 5-12 (ECF pagination); Letter from Dimitrios Fatouros to Chambers of Judge Holwell at 1 (April 25, 2011). In determining whether to enforce forum-selection clauses, courts employ a multi-factored test that focuses on specific litigants and their unique factual circumstances. *See, e.g.*, *Atlantic Recording Corp. v. Project Playlist, Inc.*, 603 F. Supp. 2d 690, 695 (S.D.N.Y. 2009). Thus, deciding whether the forum-selection clause is enforceable against either Fatouros or Fteja will require completely separate legal analyses. The enforceability of Facebook's forum-selection clause therefore is not a "common" legal issue for Rule 20(a) purposes.[2]

### C. Joining Fatouros will result in prejudice, delay, and complexity.

Court should deny his motion because adding him as a plaintiff would harm Fteja and Facebook and unnecessarily complicate this case. *See, e.g.*, *Acevedo v. Allsup's Convenience Stores, Inc.*, 600 F.3d 516, 521 (5th Cir. 2010) (even if Rule 20 is satisfied, district courts have discretion to deny joinder to avoid prejudice and delay). Fatouros proposes to litigate his case and Fteja's case together, even though the claims they make and the facts they allege are entirely different. Proceeding in that manner would prejudice Fteja's ability to prove his claims and Facebook's ability to pursue its defenses during discovery, motion practice, and trial. *See Morris v. Northrop Grumman Corp.*, 37 F. Supp. 2d 556, 581 (E.D.N.Y. 1999) (severing trials because "[t]he potential inferences or conclusions that the jury may draw from the different claims and the strength of the respective cases could unfairly prejudice [defendant], and perhaps one of the plaintiffs"). Furthermore, adding Fatouros as a plaintiff would double the volume of briefing; extend the discovery period and multiply discovery disputes; and make it more difficult to schedule hearings and conferences. There is simply no reason to delay and complicate this case in any of those ways.

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[2] Fatouros also suggests that whether Facebook provides sufficient notice of its terms of service is another common legal issue. *See, e.g.*, Dkt. 12 at 16-20; Dkt. 12-1 at 4, 12-15 (ECF pagination). He is wrong. Fteja's complaint makes clear that Fteja had actual notice of Facebook's terms of service and agreed to those terms. *See* Complaint ¶ 8 ("The plaintiff has been adhering to facebook terms of services[.]"). Much as he may want to, *see* Dkt. 17 at 1, 3, Fteja may not backtrack now and claim he was unaware of those terms.

## CONCLUSION

Fatouros cannot invoke Rule 20(a) because he is not a party to this case. And even if he could invoke Rule 20(a), he could not satisfy it because his allegations have nothing to do with Fteja's allegations. Finally, adding Fatouros as a plaintiff would prejudice Fteja and Facebook and unjustifiably delay and complicate the proceedings. The Court therefore must reject

should be denied.

Respectfully submitted,

Dated: May 3, 2011

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